MARCH UPDATE 2026

Children

Re H (Children: Expertise of Witness) [2026] EWCA Civ 249
Court of Appeal, 12 March 2026, Sir Andrew McFarlane P, Lewison and Peter Jackson LJJ
Naomi Madderson KC and Kimberley Gordhandas, instructed by Rands Solicitors, for the mother; Brett Davies, instructed by Lincolnshire County Council, for the local authority; the first father and the children by their guardian did not participate; Alex Taylor, instructed by Ison Harrison Solicitors, for the second father, by written submissions only

The eldest child was born in 2011. The mother then separated from the father (the first father) and began a relationship with a different man (the second father), going on to give birth to twins by him. The second father had a very bad criminal record. The family was known to social services because of poor home conditions, domestic abuse and concerns about the eldest child's behaviour and the adults' responses to that behaviour. The local authority issued care proceedings in February 2022. A judge approved the children's placement in foster care with arrangements for regular contact with the mother.

At a further hearing on 3 March 2022, case management decisions were made, including an order for the joint instruction of a psychologist "*to undertake a psychological assessment of the first respondent mother and the children*". No application notice was made and no expert had been identified. The next day, counsel for the guardian made inquiries by email of a specific expert's practice administrator, and by 8 March it was established that the expert would be able to accept instructions, carrying out inquiries in May and reporting at the beginning of June. Counsel conveyed this to the local authority representatives. Apparently the mother and the first father (who were each legally represented) and the second father (who was not) were not part of this correspondence, but a draft order, prepared by counsel for the authority, was in due course agreed by the parties and approved by the court. It named "*Graham Flatman, psychologist*" as the jointly instructed expert.

The initial email response from the expert's practice to counsel on 7 March had contained this notice at its foot:
"*For your information*
For the sake of clarity and openness I am informing you that following a complaint to Health and Care Professions Council (HCPC), initiated by a parent in a family matter, there is to be

a tribunal hearing with regard to my fitness to practise. The central issue concerns areas of expertise and as to whether or not I have the expertise to undertake the assessments of adults. I strongly contest this, of course, since I have training and a vast amount of experience in child, adult and family work, over a number of years. This is an issue in progress. The HCPC have not imposed any sanctions on my work, nor have they indicated that I should inform those instructing me. There is no need to change my CV or Qualifications and Experience which are correct and accurate. I will inform you about any developments.
Yours sincerely,
Graham Flatman"

Neither the guardian nor the local authority had made any further inquiries as a result of this notice, and the other parties and the court had not been informed about it before the draft order was approved.

A letter of instruction, drafted by the guardian's solicitor, was then sent to the expert on behalf of all parties. He was provided with the court papers and requested "*to undertake a psychological assessment in respect of the family and to prepare a report thereafter*"; this assessment was to be not simply of the children but also of the mother. The expert carried out his enquiries over the course of 5 days, interviewing the mother by video link, observing the mother's contact with all three children, assessing all three children and speaking to their two sets of foster carers. The fathers did not participate.

The expert provided his report on 22 July 2022; it ran to 88 pages with a further 10 pages of supporting appendices, including his CV: this described him as a chartered psychologist and set out his qualifications and experience. His registration with the HCPC was as a "*Practitioner Psychologist (Educational)*" and in fact he had spent 17 years working for local authorities as an educational psychologist. His report in this case included a review of the mother's medical records, reviewed "*from the perspective of my expertise as a psychologist*". Having given a detailed account of the mother's perspective in interview, he carried out a "*cognitive assessment*". As part of this, to the extent possible on a video link, he administered the Wechsler Adult Intelligence Scale IV Edition UK and interpreted the (incomplete) results. He then administered the Millon Clinical Multiaxial Inventory III (MCMI-III), which he described as a self-report inventory measuring underlying personality features and current emotional and interpersonal difficulties; it could be used to determine whether an individual meets diagnostic criteria for personality disorders as defined by the DSM – IV. He noted that the diagnosis of personality disorder was a matter for psychiatric expertise. He set out the test results in an appendix.

In March 2023, the judge made care orders in relation to all three children. The judge described the expert's report as an extremely thorough and extensive assessment and his oral evidence as measured and helpful. She accepted his professional views. Equally, she based the care orders on a wide range of factors, including not only the expert's evidence, but also evidence from the social worker, an independent social worker and the guardian. The mother had remained in a relationship with the second father, and in the judge's view the mother, in her oral evidence, had not accepted responsibility for the situation the children were in.

In October 2023, the HCPC upheld the complaint against the expert, alleging that he had accepted instructions under an order referring to him as a clinical psychologist, and had conducted a clinical psychological assessment and psychometric testing of a parent when he was not registered or qualified to do so. The expert had since decided that he would not

undertake further work as an expert witness. In April 204, the HCPC panel found that the proven allegations amounted to misconduct and imposed a suspension of 6 months on him. In May 2024, the mother in the care proceedings complained to the HCPC that the expert had similarly not been qualified to assess her and that his opinions had resulted in care orders being made.

In November 2025, the mother was granted permission to appeal the care orders out of time, on the basis that there was a compelling reason for hearing the appeal, so that guidance could be given on the procedure to be adopted in similar circumstances. A condition was imposed under Civil Procedure Rules 52.18, that the children were not to be told of the appeal.

The Court of Appeal dismissed the appeal and issued guidance.

The court did not consider that there was a serious procedural irregularity in the instruction of the expert, and it had not been demonstrated that that there was any irregularity arising from his work in this case. Even if this were not the case, the judge's decision had not been unjust because it had been securely based on the whole of the evidence, of which the expert's opinion was but a part.

There had been a number of shortcomings in the process leading to this expert instruction. The fact that there had been no Pt 25 application and that the parents had not been consulted about the identity of the expert represented a departure from good practice. From the outset, there had been some laxity in the approach to the Pt 25 procedure. Once the parties had agreed that a psychological assessment of the family was necessary, they had rightly acted promptly. However, although there had been no formal application, accompanied by a draft order, the judge had not expressly dispensed with that requirement. Instead the judge had approved the instruction of a psychologist in principle, without giving thought to the type of expertise that was required, perhaps because the issues in the case were of a familiar kind. As a result, the judge had not seen a CV before the order was made. Then, the information disclosed by the expert about the ongoing HCPC complaint had not been circulated and the opportunity for the parents or the judge to take an interest in that matter had never arisen. However, while this court did not excuse these instances of procedural slackness, hey did not amount to a serious procedural irregularity. The real question was whether they had led to "*other*" irregularity in the instruction of an unqualified expert.

The starting point was that (in contrast to the witness in *Re C (Parental Alienation: Instruction of Expert)* [2023] EWHC 345 and *Re Y (Experts and Alienating Behaviour: The Modern Approach)* [2026] EWFC 38, this expert was a psychologist who was regulated as an educational psychologist by the HCPC, and chartered by the BPS. In addition he was extremely experienced, both as a practitioner and as an expert witness, so much so that everyone had apparently been content for him to be instructed without sight of his current CV. It would clearly have been preferable at any date for him to have presented himself as being an educational psychologist, perhaps in addition to being a chartered psychologist. However, the requirement in the 2023 Family Justice Council/British Psychological Society Guidance to use the HCPC protected title, had not been a requirement that appeared in the 2016 FJC/BPS Guidance or the BPS guidance current at the time of these care proceedings (*Psychologists as expert witnesses: Best practice guidelines for psychologists*, July 2021). The expert had been qualified to answer the ten questions regarding the children in his letter of instruction and the court did not accept that a clinical assessment of an adult in family proceedings could never be made by an educational psychologist. The Family Court was

regularly assisted by expert opinions from both clinical psychologists and educational psychologists. It was important that opinions were given only by suitably qualified experts and that there was clarity about the kind of expertise possessed by an expert and about the task that they were being asked to perform. However, the psychological assessment of a family would generally require expertise in assessing children, parents as individuals, parents as parents, and child-parent relationships. These elements were not sealed units but part of an organic whole. There would often be a considerable degree of overlap between issues and, as shown by the BPS' descriptions of expertise, there was a degree of overlap between the skills possessed by clinical and educational psychologists. In many cases it would be neither possible nor helpful to seek to draw bright lines. The court had to take a broad, practical approach and to look to the substance of the matter, as well as taking account of witness availability within short timescales. There would be cases where one specialism or the other would plainly be more appropriate, for example where a problematic mental disorder in a parent made it clear that assessment by a clinical psychologist was required. However, where the court needed broad expert advice in the form of a whole-family assessment, a case might well be made for the instruction of an experienced educational psychologist. The court therefore disagreed that the judge would have been bound to reject this expert as a suitable expert in 2022 if the judge had known what was now known. The judge might or might not have selected another expert, if one had been available, but would not have been obliged to do so.

Overnice distinctions between neighbouring psychology disciplines were likely to lead to unintended consequences that conflicted with the policy behind the Children and Families Act 2014 and the Rules. Commenting on CPR r 35.4(3), the equivalent provision to the Family Procedure Rules 2010, r 25.8(1)(a), *Zuckerman on Civil Procedure* (5th ed.), 21.43, stated that the court's policy was to limit the number of experts to the minimum compatible with the overriding objective. This clearly applied, equally or even more so, to children proceedings, where delay was presumed to be contrary to the child's welfare. More than that, when a court decided whether to give permission for an expert instruction, that court must have regard to any impact of giving permission on the welfare of the child, including the impact of any examination or other assessment on the child's welfare, that being the first listed matter under s 13(7) CFA 2014. The court would therefore strive to ensure that any necessary psychological assessment was carried out by one expert only, provided the witness's expertise was sufficiently broad to undertake the essential elements of the instruction.

By the time of the hearing in 2023, the expert's report had been there to be judged on its merits. He had not made any clinical diagnosis in respect of the mother, instead expertly pulling together the available information in order to arrive at a formulation of what had gone wrong in this family. It would have been a matter for the judge to decide if the expert was qualified to administer the MCMI-III psychometric test, but the expert had not been asked about that and the mother's answers during the test had, in any case, been invalid (because of invalid disclosure). It did not require psychological expertise to assess levels of insight, so the expert had not overreached his qualifications in expressing an opinion about that. It should not be forgotten that the parties had had the opportunity to test the expert's evidence at trial. He could have been cross-examined about his qualifications, experience and opinions, but had not been. The judge had been entitled to describe the expert's report as an extremely thorough and extensive assessment, and his oral evidence as measured and helpful.

The second reason for dismissing the appeal was that, seen objectively, there had been no injustice in this case. The judge's decision had been based on the evidence as a whole and, while the expert had drawn matters together in his evidence, the other evidence so clearly supported the making of care orders that it was realistically impossible to envisage any other outcome. In this context, the evidence of the mother and the second father was of particular importance. Given the extent of the undisputed threshold findings and the chaotic state of their relationship, this had not been a marginal decision, and the return of the children could not safely have been contemplated.

Even if the court had found the expert to be unqualified, the appeal would not inevitably have succeeded. Whether or not an appeal should succeed on this ground depended upon an assessment of the overall fairness of the proceedings. If a trial was unfair, the entire outcome would indeed have to be set aside (*Serafin v Malkiewicz* [2020] UKSC 23), but that begged the question, and in this instance, the trial had not been unfair.

Guidance

The fact that an expert's qualifications were called into question in one case might prompt parties in other cases to consider mounting a challenge to the decision in their own case. However, as the present appeal showed, such challenges would only succeed where the trial court had accepted evidence from an expert who was later shown to have substantially overreached their expertise, with clear consequences for the resulting decision. Where a genuine issue of this kind did arise, it was almost always likely to be more appropriate to make an application to the Family Court than to bring an appeal. An appeal court must decide whether or not to allow the appeal, perhaps long after the original order, with limited ability to measure the effect of its decision on the children concerned. By contrast, the Family Court had the ability to gather up-to-date information when deciding how to proceed.

The most likely procedural vehicles for this in a case like this were either an application to discharge the care order under s 39 Children Act 1989, or an application for contact under s 34. In each case, the application was only likely to be allowed to proceed to a full hearing if an arguable case could be shown.

Alongside an application of that kind, a reopening of the previous findings might be sought by means of an application under the Pt 18 procedure, as most recently described in *Re J (Children: Reopening Findings of Fact)* [2023] EWCA Civ 465; and in *Re Y*. Whether that course was appropriate would be a matter of judgement. Much would depend on the extent to which the previous findings overhung the current situation. To take the present case as an example, it was not obvious that much would be gained after this passage of time by seeking to reopen the 2023 decision rather than by simply applying to discharge the care orders, if that was in any way a realistic prospect, on the basis of the current family situation.

Re J (Loss of Parental Responsibility); Re M (Loss of Parental Responsibility; and Re P (Loss of Parental Responsibility) [2026] EWCA Civ 344
Court of Appeal, 20 March 2026, Andrew McFarlane P, King and Stuart-Smith LJJ
(Re J) Laura Briggs KC, Liz Andrews and Emma Colebatch, instructed by International Family Law Group, for the father; Timothy Bowe KC and Tom Wilson, instructed by RWK Goodman, for the mother;
(Re M) Sam Momtaz KC, Emma Gatland and Alana Hughes, instructed by HRS Family Law Solicitors, for the father; Shiva Ancliffe KC, William Horwood, Daniel Taylor and Lauren Starmer, instructed by Greens Solicitors, for the mother; Andrew Norton KC, Patrick Paisley and Roseanna Cawthray Stern, instructed by the local authority; Karl Rowley KC and Matthew Maynard, instructed by Anthony Collins Solicitors and Bailey Wright and Co, for the child;
(Re P) Hannah Markham KC and Madeleine Whelan, instructed by Judge & Priestley LLP, for the second father; Andrew Bagchi KC, Emma Hudson, Luke Eaton and Sylvie Armstrong, instructed by GT Stewarts, for the guardian; Anna McKenna KC, Naomi Wiseman and Joseph Landman, instructed by Creighton & Partners, for the mother; Janet Bazley KC, Karen Kabweru-Namulemu and Melissa Elsworth, instructed by Charles Russell Speechlys LLP, for the first father.
Throughout: Joanne Clement KC and Alexander Laing, instructed by Government Legal Department, for the Secretary of State and the Registrar General;

Michael Gration KC and Andrew Powell, instructed by Mills and Reeve Solicitors LLP, for REUNITE; Deirdre Fottrell KC, Lorraine Cavanagh KC and Lucy Bennett, instructed by ITN solicitors, for the Association of Lawyers for Children.

There were three separate appeals, each relating to the attribution of parental responsibility and the status of 'father' with respect to a child. In two of the cases (Re J and Re M), the status of an individual who had been registered as 'father' in a child's birth register entry was subsequently challenged. In one of these two cases, a genuine assumption that the man registered as the father of the child was indeed the biological father was later found to be wrong; in the other case, it had always been known that the man registered as the father was not the biological father. In both cases the father had acted as a psychological or social father to the child, believing that they shared parental responsibility with the mother, as a result of having been registered as the 'father' on the birth register entry. In each case, the man who had been registered as the 'father' but who was not the biological father, wanted to continue in a parental relationship with the child. In each case, a judge ruled that the man was not the 'father' of the child, made a declaration of non-paternity, and ruled that as a result any parental responsibility for the child was lost.

On appeal these two cases raised the following questions: i) was the definition of 'father for the purposes of the Children Act 1989 limited to a child's biological/genetic father or could it extend to others who had acted as the child's psychological/social father? ii) did parental responsibility attributed by registration as a child's 'father' in the birth register entry attach to a father who was not in fact the biological/genetic father of the child? iii) if parental responsibility was granted to a non-biological father by such registration, was it automatically terminated upon the making of a declaration that the individual was not the child's father under Family Law Act 1986, or did it continue unless and until terminated by a separate CA 1989 court order? and (iv) if a separate court order was required to terminate parental responsibility in such circumstances, was this a decision to be determined by affording paramount consideration to the child's welfare, or on some other basis?

The third case (Re P) also raised the question of parental responsibility attributed following the naming of an individual as 'father' in a birth register entry, but with an additional level of complexity arising from the fact that the mother had engaged in sexual intercourse with each of two identical male twins in the course of one week, at the time that conception must have occurred. As a result, whilst DNA testing had established that the child's biological father was one of these twins, it was not possible to say which of them it was. The woman had lived with one of the twins (and had had a younger child with him, indisputably his child) and this man was the individual named as the father on the child's birth register. However, when this relationship broke down, the woman and the second twin had started living together and the second twin wanted to assert his own paternity of the elder child. The judge had found that each of the twins had a 50% chance of being the father, but neither had been proved to be so on the balance of probabilities. He had refused to remove the twin named as the father on the basis that, on the evidence, it could not be proved that he was the father, equally, it could not be proved that he was not the father. This case raised additional issues to those raised in the first two cases.

The Court of Appeal dismissed all three appeals, except that, in the case of P, an order was made under the Children Act 1989, s 4(2A) that any parental responsibility that the man registered as her 'father' might have acquired under s 4(1) by such registration was to cease from the date of this court's order and any further order that might be made following additional submissions relating to P's 'welfare'.

As ultimately accepted by the parties, the definition of 'father' for the purposes of the Children Act 1989 was the common law definition and was limited to a child's biological/genetic father. The definition did not, and could not, extend to others who had acted as the child's psychological/social father.

Where an individual was registered as a child's 'father' in the child's birth register entry, the parental responsibility attributed by such registration did not attach to that individual if they were not, in fact, the biological/genetic father of the child. In order for parental responsibility to be acquired by registration on a birth certificate under CA 1989, s 4, two conditions must each be fulfilled:
a) the person must be the genetic/biological father of the child; and
b) that person must be registered as 'father' in the child's birth register entry.

No parental responsibility was acquired at any stage by an individual who was wrongly registered as 'father' in a birth register entry. In consequence, the question of whether parental responsibility in such circumstances was automatically terminated on the making of a declaration of non-parentage under the Family Law Act 1986, s 55A, or required a bespoke order, simply did not arise.

On that basis, it was clear that the judge's decision in Re J had been entirely correct for the reasons given by the judge (save that, rather than any parental responsibility being 'void ab initio', the correct understanding was that it had never arisen in the first place as the registrant was not the father). *P v Q and F* [2024] EWCA Civ 878 established that mere registration did not prove fatherhood. There was no basis for holding to the common law definition and the strict wording of the statutory scheme, on the one hand, whilst contemplating that Parliament, in some way, had expressly tolerated a wider definition of 'father' that was triggered by registration on the other. The two propositions were simply not compatible with each other.

The judge's decision in Re M was also going to be upheld. The argument that the naming of an individual in a birth register entry as 'father' was sufficient evidence that the named individual was the child's father was not sustainable in the light of the court's decision as to the limit of the consequences of registration in *P v Q and F*. In most cases there would be no dissonance between the parties' understanding of who a child's biological father was and the underlying genetic truth of that understanding. There was no basis for holding that Parliament had intended that registration would establish a form of working assumption that the individual was, indeed, the biological father unless or until proved otherwise. There would inevitably be some cases where a genuine belief in biological paternity would turn out to be wrong. In such cases, although there would have been an assumption of parental responsibility during the interim period, which might well have been exercised, once that assumption evaporated on confirmation of the true position, the mistaken existence of that parental responsibility might be of limited consequence, not least because of the existence of the powers arising under s 3(5) of CA 1989 (permitting a a person who did not have parental responsibility for a particular child but had care of the child (subject to the provisions of the

Act) to "*do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare*".

Where, as in the first two cases, an individual was not the legal father, and had not acquired parental responsibility through registration on a child's birth certificate, but had become a psychological or social parent to the child, their role in the child's life might be reflected by the making of a s 8 child arrangements order, together with the attribution of parental responsibility by an order under s 12 CA 1989.

Before leaving the issues that were common to all three appeals, it was right to make some further observations:
i) the question of the validity of a parental responsibility order made under CA 1989, s 4(1)(c) did not arise in these appeals, but the Secretary of State was likely to be correct in the submission that, where such an order was made with respect to an individual who was not the child's genetic father, the order would, in common with all court orders, be valid whilst it was in force but, where the issue was raised and non-paternity was established, the court must discharge it on the basis that it was made without jurisdiction;
ii) the Secretary of State and Registrar General were invited to consider having a simple statement of the definition of 'father' on display at each Register Office;
iii) Where there was a risk of child abduction and there was any uncertainty as to paternity, an individual registered as 'father' in a child's birth register entry would be well advised to apply to the court for orders under s 8 controlling the child's departure from the jurisdiction and, if justified on the facts, for an order conferring parental responsibility under CA 1989, s 12;
iv) Where a court made a declaration of non-parentage under s 55A FLA 1986, in a case where, hitherto the non-father had assumed that they had parental responsibility, the court should consider making interim orders as in (iii) above to hold the situation and avoid the consequences of the abduction 'gap' identified by Reunite in this case;
v) Where a child had been removed or retained abroad in circumstances that would be wrongful under the Hague Convention if the left-behind 'parent' did have parental responsibility, but where, although that person had thought that they had parental responsibility, in reality, they did not do so (on subsequent proof of non-paternity), the court should look to other remedies either under the CA 1989, or by treating the circumstances as a non-Convention abduction case.
vi) The court was very grateful to counsel for Reunite who had prepared suggested guidance for cases where there was, or might be, an international element and where the issues covered in these appeals might arise. The draft guidance had not been the subject of submissions or other consideration during the oral hearing, and the issues raised did not directly arise from any of the three appeal cases. In the circumstances, it would not be appropriate for this court to do more than to encourage Reunite to publish the draft as a thoughtful and useful source document for future consideration.

On the basis that the father of a child, for the purposes of CA 1989, was limited to the common law definition of someone who was proved to be the genetic/biological father, neither of the twin men was, as a matter of law, P's father. It followed that the man registered as the 'father' in the child's birth registry was not entitled to be so registered. However, having been registered as the 'father' in P's birth register entry, if he was actually the father, he would have acquired parental responsibility for P by the act of registration under s 4(1). The ALC had been right to stress the need for a child to understand the truth of their parentage and core identity, in so far as this was possible. However, currently the truth of P's

paternity was that their father was one or other of the two identical twins, but it was not possible to say which one. It was possible, indeed likely, that by the time P reached maturity it might be possible for science to identify one father and exclude the other twin, but at the moment that could not be done without very significant cost, and so her 'truth' was binary and not a single man. It was for P's mother to determine how P was introduced to this truth over time.

The guardian's aim of removing the twin currently registered as the father from the birth register entry, and, thereby, removing the otherwise continuing ambiguity over a registration which might, or may not, be true, was a laudable one. However, in circumstances where the court was simply not able to declare that the man registered was not P's father, no alternatively formulated declaration under s 55A FLA 1986 would be sufficiently clear to cause the Registrar General to remove the man from the certificate. There was a distinction between something being not proven, and making a positive declaration that the fact asserted was not true. To adopt the approach urged on the court by the guardian would, on the evidence in this case, ignore the 'fact' that the man who had been registered as P's father might well be P's father. By the same account, the court might be invited to declare that neither of the twin men was P's father, whereas the truth was that her father could only be one or other of these men. FLA 1986, s 58(1) required proof that an individual was not the child's father. On the basis of the court's findings, it was simply not possible to hold that the man registered as the father was not P's father, indeed, there was a 50% chance that he was. Thus, a route out of the current situation by divining some well-formulated declaration did not arise and the judge had been right not to make any declaration in the case of P.

Whilst this mean that the man currently registered would remain as 'father' in P's birth register entry, the question of the continuation of parental responsibility was a separate issue. The court retained the power to terminate any parental responsibility that had been acquired, or in this case might have been acquired, by s 4(1) CA 1989, by making an order discharging parental responsibility under s 4(2A) CA 1989. It was unhelpful for there to be ambiguity over the question of whether or not the man registered had parental responsibility under s 4(1) but the situation resulting from the judge's order and this court's determination on the principal issue was that if the man registered as the father was the legal father he had parental responsibility, but if he was not he did not, while at the same time it could not be said whether he was or was not the legal father. That outcome was not in P's best interests and was contrary to her overall welfare. With the benefit of the hindsight now achieved as to the definition of father, it would be wrong for the court not to achieve clarity by discharging any parental responsibility that the man registered as the father might have had, by making an order under CA 1989, s 4(2A). The basis for discharging parental responsibility was, firstly, that, as he was not proved to be the father, the man should not have been registered as 'father' and he was not a candidate for the acquisition of parental responsibility under s 4(1). The court would hear submissions as to whether either, both or neither of the twins should now be granted parental responsibility, on the basis of the child's welfare.

Ogbedo, G and V v Taiga [2026] EWHC 411 (Fam)
Family Division, 24 February 2026, Sir Jonathan Cohen
Nicholas Wilkinson, instructed by HCR Law, for the mother and children; Femi Osibanjo, solicitor partner in K&S @ Law, for the father

The Nigerian parents had twin girls, V and G, who were raised in England. Having found that the parents were not married, in 2007 a High Court judge provided that upon completion of the girls' secondary education, the father was to make periodical payments to them: "*from the date of the commencement of any tertiary education the sum of £15,000 pa directly to each of the twins for each year of their tertiary education (first degree only)"*. The order also provided for the father to pay for additional funds to cover the cost of a classroom assistant and the cost of speech and language therapy provided for the benefit of one of the girls, G. In addition he was to pay for annual medical checkups for her. Other provisions covered the purchasing of a property for the occupation of the twins "*with a minimum of 3 double bedrooms or 2 double bedrooms and 2 single bedrooms*". This property was to be made available for occupation by the mother and the twins during the period of the twins' dependence, defined as the period when the twins or one of them undertook tertiary education to a first-degree level. This led to the purchase of a property in north London to provide a home for the mother and the two girls.

By 2018, V and G were coming to the end of their schooling. The mother's application for variation of the 2007 order came before a different High Court judge (the first having retired). The new judge made provision for various payments, including, consistent with the original order, for periodical payments for the twins until their completion of tertiary education to a first-degree level.

In January 2019, V took her A levels and then undertook a preparation for university entry foundation course. From January 2020 to September 2021, she attended university, seeking to obtain a BSc in medical sciences, but left the course before completion. From September 2021 to summer 2024, she did a degree in computer science with AI, receiving a 2:2. In June 2019, G left her A level college, and between October 2019 and July 2023, she did a first degree, achieving a 2.1.

In July 2024, the mother applied for a further variation. In September, G attended another university, hoping to graduate with an MSc. In October, V started a course for an MSc in AI. She left the course in September 2025 and was resitting some papers with results due in March. G submitted her dissertation in October 2025 and was going to get her results in March 2026.

In October 2024, the mother's application came before the same judge as before. At the door of the court the father offered to pay a lump sum of £40k to be used to meet V's tuition fees at the university she was attending and "*the children's living and accommodation costs at their respective universities. This shall be the sum payable for the children's benefit in respect of their tertiary education unless otherwise supplemented by further order of the court or agreement between the parties*". However, by this time, the mother had issued

nullity proceedings, despite having failed in the litigation to prove that she was ever validly married. In order to avoid an even greater multiplicity of litigation, the judge determined that the nullity proceedings should be dealt with first and, in due course, struck these out.

On 22 May 2025, the twins issued their own application for a lump sum order, a property adjustment order, a settlement or a transfer of property order and a periodical payments order. They did not expressly apply to vary the existing order. The judge made various case management orders, including provision for two independent single joint experts, a psychiatrist and an occupational therapist respectively, experienced in attention deficit hyperactivity disorder and autism spectrum disorder, to provide reports addressing the diagnosis and prognosis of any medical condition suffered by G, a proposed treatment plan, details of the state benefits to which G might be entitled by reason of her condition and the cost of implementing any such treatment plan.

In the proceedings two separate experts diagnosed G as suffering from a complex neurodevelopmental profile including autism spectrum disorder, dyslexia, dyspraxia and severe anxiety; her difficulties were described by one of the experts as "*longstanding, pervasive, and impact her academic, social, and occupational functioning*". In this expert's view her "*ongoing struggles are compounded by significant life stressors, including her parents continuous court proceedings and the transition to post graduate study. Despite her cognitive strengths and academic achievements, her social, organisational, and emotional challenges place her at high risk of underemployment and social isolation without targeted intervention*". The experts both recommended CBT and group therapy options with a referral to a vocational counsellor and support for G in building independence skills to reduce her over-reliance on her twin sister V. These recommendations had largely not been acted upon, in significant part because of the backlog in the medical sector and also because of the proceedings. In the view of the second expert, assuming that the recommended measures took place: "*Prognosis is guardedly favourable . . . Over approximately six months, anxiety should reduce and executive reliability improve with CBT and initial ADHD interventions/coaching. Over twelve months, sustained gains are expected in attendance, task completion and tolerance of routine change. Over twenty-four months, with consistent supports, stable independent living and sustained employment in a suitably designed role are likely. In the absence of treatment and adjustments, recurrent overload with functional slippage and social withdrawal is likely.* The separate OT report described various difficulties experienced by G, which the OT considered were lifelong conditions that could not be cured and would have an impact on her daily functions. The OT recommended similar options, plus 12 sessions of OT.

G gave evidence in court, using a screen so as not to be able to see the father. She had applied for a PIP but had not yet received a response beyond an acknowledgement of her claim. The evidence made it clear that even though they were at different academic institutions, V spent significant amounts of time, measured in hours, on a daily basis speaking to her sister, to the detriment of her own academic performance. Neither of the girls, now 24, had found employment, although both wanted to do so.

The father had failed to comply with various legal services payment orders, but very belatedly had now complied with both costs orders and the substantive LSPOs. Between the hearing and delivery of judgment, he paid arrears of maintenance of about £7,200.

The father was now 78 and spending most of his time in Nigeria; he maintained a valuable flat in Westminster. His net worth was measured in millions, although he was less wealthy

now than he had been in 2017, as a result of the significant drop in value of the Nigerian currency.

The mother and the children were seeking a secured capital fund of £215,000 for educational, medical and living costs, some to be administered by the mother and some to be paid to G. They wanted the home in north London to be sold and a replacement property to be purchased with a housing fund of up to £950,000, the property to be held in a Disabled Person's Trust, to include costs of sale etc. The purpose of this would be to provide G with housing for life. They also wanted a car for just under £31,000, support of £24,000 for V to cover 12 months' living expenses, and £200,000 to cover all sums owed to their lawyers, plus associated costs of the hearing. The father's proposal was that the property should be sold, that he would pay for all of the recommended treatments and therapies for a maximum of 2 years, plus £1,200 pm for up to 2 years or until G started work, whichever came first, plus making rent-free accommodation available to G in the north London area (to a value of £1,600 to £1,898 pm) until June 2027 or whenever the local authority provided her with accommodation, whichever was earlier. He was not proposing any provision for V; he acknowledged that V could live with G in the accommodation he would be providing, but on the basis that he would not be responsible for her upkeep or any additional expense.

The High Court judge made an order requiring the father to provide a housing fund and a capital fund for the benefit of the child with severe long-term issues.

It did not matter whether the court found jurisdiction on the mother's application, or on the children's application, or on both, as long as it found it on one of them. The court was entitled to adopt a purposive construction of the Children Act 1989, Sched 1. It would be unfair if the court were to find that a child, even if aged more than 18, who was subject to special circumstances which justified the making of an order (almost invariably by reason of a disability) was debarred from pursuing an application for support because of the fact of an order for his maintenance having been made before he reached the age of 16. It would be illogical to arrive at such a conclusion so as to leave his needs unmet when they would have been met if his parents were married or if he had not been in receipt of such an order. The court was fortified in this conclusion by the commentary appearing at 2.364 of the Family Court Practice, which, although not authority, was helpful. Whilst para 2 of Sched 1 made provision for an application by a person who had reached the age of 18, nothing in the statute debarred the parent of such a child from making an application on behalf of the child. The court also drew attention to Sched 1, para 1(4), which provided for the application to vary being made by "*any person by or to whom payments were required to be made under the previous order*". Whilst the previous order had, in the court's view, lapsed by reason of the conclusion of a first degree of tertiary education, that did not prohibit an application for a variation, including extension, or discharge. The test was not whether the order was still in effect at the time of the application but whether payments had been required to be made under the previous order, as they plainly had been.

The court did not see how the girls could still properly be classified as having remained in tertiary education to a first degree beyond July 2023 (for G) and July 2024 (for V). At the time they had made their own applications they had ceased tertiary education to a first-degree level. It was not necessary to enter into the debate about what the father had been told about the girls' further education and whether he had consented or not. The fact that he had provided some support during the period after their first degree on a voluntary basis did not amount to a variation of the court order. In any event, since both girls had in effect finished

their university education, the relevant provision did not apply and on the facts of this case, after each child had been in tertiary education for over 6 years it was inconceivable that an order would be made under that provision.

This case was and always had been about whether G's medical condition amounted to special circumstances which justified the making of an order, within Sched 1, para 2(1)(b).

The court was not attracted by the notion of a Disabled Person's Trust (otherwise known as a Vulnerable People Trust). It was not clear on the evidence provided that G was even eligible for such a trust, as she was not currently in receipt of any of the benefits which would open that door. But even if such a Trust was available, there was no need to deprive the father of his capital in order to meet G's needs.

The court was satisfied that a 3-bedroom property was required. It would not be right to remove either the mother or V from G's support network in the house. The household should be able to continue with its existing personnel. Their absence would undoubtedly rebound adversely on G. The advantage of a property owned by the father and made available for G's use as her home without a time limit upon her occupancy was that she would have the security of a long-term home without the anxiety of knowing that she must move in a few years' time unless she successfully applied for an extension. This avoided the inevitability of another hearing. G suffered from a lifelong condition and there was a very real risk that she would not achieve the employment and independence which was postulated by the experts. It seemed much better to allow the father the ability to apply to terminate the provision of the property in the event of significantly changed circumstances than to pitch the parties into the prospect of further litigation in a few years' time by limiting the occupancy. As so often happened in these cases, the parties had retreated to the most extreme positions. The court accepted that G simply could not cope in a dwelling which was shared, in the sense that there were other occupants going up and down the stairs to other dwellings within the premises and she needed her own space including a small garden. The presence of strangers upset her greatly. Her social anxiety was pronounced. The court had therefore looked at 3-bedroom houses. Having regard to the particulars provided, the sum to be made available was £780k, inclusive of the costs of purchase, with a further sum of £20k to cover the costs of redecoration and essential works and equipping and added to the housing fund, rather than placed in a restricted fund. The total of £800,000 was to be used to provide accommodation for G and, to the extent that they wished to avail themselves of it, V and the mother, who shared the task of providing G with support. This accommodation would be available to G until, upon F's application or agreement, such time as it exceeded her needs or the special circumstances ceased to be present.

An additional secured capital fund would also be provided, to cover the following items:
i) The cost of medical and therapeutic services for G. The court would allow £10k to cover courses of all sorts to help G along the road to semi-independence and to employment.
ii) Ongoing provision for G. The court allowed £30k pa for 3 years. It would be paid monthly until the sale of the property and then capitalised. The repeated defaults by the father meant that all the various payments would be capitalised out of the sale proceeds.
iii) It was important to note that apart from the provision of medical and therapeutic care, G's condition did not lead to much of an increased income need for her. She led a very quiet life and did not incur significant expenditure.
iv) The court had needed to include something for the cost of running the property, but it was reasonable to expect the mother and V to make a contribution to the expenses of the home.

Both had or would soon have an earning capacity or entitlement to benefits. The court assessed G's element in respect of this cost at £5k for each of the 3 years and this was already included in the assessed annual payment to her.
v) There was no basis for making the order requested for the provision of a car and insurance. It was reasonable to ascribe to G some of the costs of running the car and the cost of an Uber when used and this had been taken into account in the sum allowed for her annual support.
vi) The additional services that the mother and V provided for G came at minimal expense to them but would undoubtedly be to a limited extent time consuming. The court proposed between them to allow an additional figure of £12,000 for one year.

Having assessed G's need, leaving her exposed to the risk of being made homeless upon the father's death even if special circumstances remained, would be wrong. The court accepted that a charge should be registered and a deed of trust to secure G's right of occupation following the father's death.

The court did not propose to reduce the sums awarded by benefits, if any, awarded to G. If she received a PIP, then that would be hers to use as she wished. Likewise if she received other benefits or an earned income. It would only be a recipe for further litigation and expense if some form of accounting had to take place.

The court had been told that the mother's solicitors had incurred costs and disbursements in the sum of £197,000. The sum awarded in July 2025 by way of LSPO was what the court had regarded at the time as a proper amount to bring this litigation to a conclusion. However, as this hearing had extended for 1 day longer than estimated in July 2025, the court would, in effect, increase the allowance by a little under £9.5k by making a costs order in respect of the reasonable costs of that additional day. Also, the court accepted that the father's approach to this litigation, where he had been in breach of many orders, had increased the costs, albeit they had to a significant extent been met by the provision of costs orders and would allow the further sum of £20,000 to cover part of the shortfall, reflecting the additional work that the father's presentation had entailed. The court did not accept that simply because (at least in theory) the solicitors might be able to recoup the shortfall from the girls, the court should write what would in effect be a blank cheque, in the sense that it would cover the shortfall whatever it might be.

Costs

Re M (A Child: Costs) [2026] EWCA Civ 381
Court of Appeal, 27 March 2026, Peter Jackson LJ and Sir Launcelot Henderson
The father in person; Anita Guha, instructed by AFP Bloom LLP for the mother.

The parents married in August 2015. In 2017/18 they moved to Dubai, where the mother had found work, and the child was born there in November 2020. The marriage deteriorated, and

the parents spent increasing time in the UK with their respective families. In March 2023, they left Dubai permanently, the mother returning to live with her family, the father returning to live with his.

The child lived with the mother and spent time with the father. The mother claimed that the father was so abusive towards her that handovers had to be professionally supervised. The father disputed at least some of the mother's assertions and said that the mother unreasonably curtailed his time with the mother. In October 2023, the father applied for a child arrangements order, seeking unsupervised and extended time with the child.

On 30 November 2023, a judge heard an application by the mother for permission to take the child with her to Dubai for a few days, as she needed to travel there for her work. The judge granted the application, found that the father had been wholly unreasonable in contesting it, and awarded costs against him.

At the First Hearing Dispute Resolution Appointment before the magistrates, on 18 December 2023, the mother indicated that she was not seeking a separate fact-finding hearing and arrangements for supervised visiting time were agreed, with third parties present for handovers. However, on 19 January 2024, the magistrates concluded that a fact-finding hearing was needed after all and gave directions for such a hearing over 2 days in March. The parents agreed to instruct an independent social worker. At the next hearing, in March, the magistrates once again reviewed the need for a fact-finding hearing, concluding this time that such a hearing was not needed, given that the father had accepted that his behaviour had been abusive and should not have happened, and that as a result of the behaviour the mother would have felt belittled and humiliated and scared. The father had also conceded that the child would have been emotionally harmed. The father denied that his acknowledged behaviour amounted to coercive and controlling behaviour, but the magistrates disagreed, finding that it did. The independent social worker was directed to provide a welfare report by 20 May 2024, and a dispute resolution appointment was listed in June.

The independent social worker recommended a staged move to overnight stays, with the eventual aim of an equal share of his time between the parents. At the June hearing, the panel of two lay magistrates directed the father to engage in a "*Parenting MOT*", focused on his insight into his behaviour, his acceptance of responsibility and his capacity to change. They listed a further DRA in September 2024, and a final hearing in November. At the September DRA, the parents agreed interim arrangements for the child to spend two afternoons a week with the father, and 6 hours on Sundays, all supervised.

A meeting between the parents and the independent social worker on 27 September 2024 was not a success. According to the mother, the father was disrespectful, offensive and dismissive; while even the father accepted that it had not gone well. At a handover on 18 October, of which the parents gave different accounts, the mother asserted that "*the father was belittling and controlling to the point that the contact supervisor asked her whether the father has a problem with women*".

At the next hearing in November 2024, the magistrates decided that they needed to hear oral evidence and the case should be adjourned; they required the father to undertake further therapy, as recommended by the independent social worker. The father's "*Parenting MOT*" report, filed on 12 March 2025, was generally positive, supporting "*quality time*" for the father. The independent social worker's additional report still supported the move to

overnight contact. At the adjourned hearing, listed for one day, there was no oral evidence from the parents, only from the independent social worker. The magistrates nonetheless decided that this should be the final hearing and went on to make a final order implementing a shared care arrangement, building up from overnight stays to start soon after the hearing to a full shared care arrangement. Both parents were dissatisfied with this outcome. The mother wanted to trial the overnight arrangement and proposed a final hearing some months later. The father claimed that the independent social worker's clear recommendation had been for the shared care arrangement to start sooner than the magistrates had provided for. Both appealed.

The appeal judge decided in the mother's favour, concluding that the case should have been adjourned for a final hearing in the autumn of 2025, and that the pace of the move to overnight stays should proceed more slowly than envisaged by the magistrates. The judge took the view that the March hearing should not have been treated as a final hearing and that the magistrates had effectively delegated their decision on risk to the independent social worker. In the judge's view, although the magistrates had accepted that PD12J was engaged, they had not analysed the ongoing impact of the father's abuse on the mother, failing to explain, contrary to the requirements of PD12J, how a victim of domestic abuse could, without any apology from the father, navigate the stepped changes proposed and reach a fully workable co-parenting arrangement with the father. In an addendum judgment (appointing a new independent social worker) the judge noted that the mother had applied for an order requiring the father to pay her costs of both the hearing before the magistrates and the appeal, on an indemnity basis, and invited written submissions on this issue.

The judge handed down a costs judgment on 1 October, without any further oral hearing; the judge required the father to pay the costs of the appeal, albeit largely on the standard basis, because of: the strength of the mother's appeal; the father's decision to cross-appeal; his failure to consider whether he was acting reasonably, especially in choosing to pay money on costs that would not then be available to spend on the child; and a solicitor's letter sent on behalf of the father to the mother's solicitors on 23 June 2025, putting her on notice that the father would be seeking a costs order if her appeal was unsuccessful, which the judge thought showed an acceptance by the father that costs should in principle follow the event. The total the judge awarded the mother was £32,723.50. However, she did not order the father to pay the costs of the hearing before the magistrates, having concluded that the father's wish to retain the 25 March 2025 hearing to deal with interim issues had not been unreasonable, and that his ready and swift acceptance of the magistrates' unexpected decision to make a final decision also could not be described as unreasonable. The father appealed.

The Court of Appeal allowed the father's appeal, discharging the costs order made by the judge and replacing it with no order for costs.

Quoting *Re E (Children: Costs)* [2025] EWCA Civ 183:
"*There is a general practice of not awarding costs against a party in family proceedings concerning children, but the court retains a discretion to do so in exceptional circumstances. These include cases in which a party has been guilty of reprehensible or unreasonable behaviour in relation to the proceedings. This practice applies equally in public law and private law proceedings, and irrespective of whether a party is legally aided. Nor is there any difference in principle between fact-finding hearings and other hearings. The court can make costs orders at any time: FPR r 28.1.*"

This general rule had been recently described as "well established and uncontroversial" in *Pringle v Nervo* [2026] EWCA Civ 266. There would be nothing to gain by another comprehensive exposition of the rule in this judgment.

The court did though have a few points that it wished to emphasise. The first was that the discretion under the Family Proceeding Rules 2010 could hardly be wider; the only stated criterion in FPR 2010, r 28.1 being what the court considered to be just. Nevertheless, FPR 2010, r 28.2 then incorporated by reference most of the provisions of the Civil Procedure Rules Pt 44, including rr 44.2(4) and (5), providing that the court would have regard to all the circumstances including the conduct of the parties. These rules provided for a close focus on the litigation conduct of the parties. The court also wished to draw attention to the underlying rationale for the general rule, which was, as set out in *Sutton LBC v Davis (No 2)* [1994] 1 WLR 1317 and *Re S (A Child) (Access to Justice Foundation intervening)* [2015] UKSC 20, that the spectre of an order for costs should not discourage those with a proper interest in the child from participating in the debate, nor reduce the chances of parents cooperation around the future life of the child. *Re S* also made it clear that the fact that a hearing was an appeal was not a good reason to depart from the general principle.

Given that the judge had not ordered the father to pay the costs in the magistrates' court, it must be taken as established for the purposes of the father's appeal to this court that the aspects of his litigation conduct which the judge had expressly taken into account in reaching that conclusion, could not be held against him as constituting unreasonable conduct in the context of the first appeal. As the judge had realistically observed, the decision to treat the hearing as a final hearing had been the magistrates, not the father's, and he had been entitled to take advantage of the position of the court "*and to seek the best possible result with the tribunal he was appearing before*". It followed that if the decision to award the mother the costs of the first appeal was justified, it must be found in factors relating to that first appeal.

The mere fact of resisting an appeal, even if brought on grounds which appeared to be strong, was unlikely to amount to conduct which was unreasonable or reprehensible, even if with the benefit of hindsight, after the appellate court had given its ruling, the appeal might be characterised as a strong one. It was important to guard against the dangers of being wise after the event. Looking at the matter objectively, and without hindsight, it was far from obvious that the father's decision to resist the appeal was from the beginning doomed to failure, when it was remembered that the magistrates had been exercising a partly inquisitorial jurisdiction with its paramount focus on the child's welfare, and were not legally bound to proceed in accordance with the parents' wishes. Further, they had had the assistance of the expert evidence of the independent social worker. This was not to doubt the cogent reasons given by the judge for allowing the mother's appeal, merely to point out that the high bar of unreasonableness in this context must involve a lot more than the mere fact of ending up on the losing side of an appeal where the welfare of a child was at stake and where the views of both parents as well as independent expert evidence needed to be considered.

It had not been fair to criticise the father for making a cross-appeal. The cross-appeal had been responsive in nature, and once it had been clear from the mother's grounds of appeal that there was going to be a comprehensive challenge made by her to the magistrates' decision, raising issues of procedure as well as the substantive merits of the timetable for moving towards shared overnight care, it had clearly been incumbent on the father to raise by way of a respondent's notice all the further points which he wished to run, so that the appellate court would be fully able to adjudicate on the matter in the round. It was also

commonly the case that a litigant wished to run arguments in the alternative which were mutually inconsistent, and it was not normally an abuse of process to do so. Here, the father had been fairly entitled to make the point that the timetable decided upon by the magistrates was in some respects slower than that recommended by the independent social worker, with no apparent explanation for the discrepancy, and to cross-appeal on that basis.

Overall, the court was unconvinced that the strength of the appeal should have been so obvious to the father and his lawyers that he should have made an open offer to concede the appeal at an early stage (presumably subject to the court's approval, given the involvement of a child) and that his failure to do so was again unreasonable.

The threat in the letter of 23 June 2025 from the father's solicitors had been, at worst, an inept (though familiar) tactical manoeuvre, which might merit some censure but could not in itself come anywhere near to justifying a departure from the general rule of no order as to costs. Nor could it reasonably be treated as a tacit admission of liability, whether by estoppel or otherwise. There could be no place for routine tit-for-tat reasoning of this nature to play any part where costs in children's cases were in issue.

Any costs order made against a parent in a case concerning the welfare of their child would prima facie reduce the money available to be spent by the paying parent on the child's welfare. This melancholy fact of forensic life could not itself be a reason for making an adverse costs order against one of the parents, although it was one of the considerations which cumulatively justified the existence of the general rule in the normal run of cases: see *Re S*.

The judge had erred in principle in distinguishing between the costs of the first instance hearing before the magistrates and the costs of the appeal. There were no grounds of sufficient weight to justify the distinctions she had drawn, and, on the contrary, every reason to make the same order for costs on the appeal as in relation to the first- instance costs below. All the considerations which explained the existence of the general rule had applied with equal force to the costs of the appeal.

This was a parental dispute of a sadly familiar kind and, whatever the outcome of the first appeal might have been, there was no indication that the litigation conduct of the unsuccessful parent had been likely to be characterised as reprehensible or unreasonable. Nevertheless, on receipt of the main judgment, the mother had applied for an order that the father should pay her costs in both courts on the indemnity basis in a total amount of some £80,000. Even the judge's order ad granted her barely half that sum, and now that that order was to be set aside the mother must also bear her own costs of this appeal, which were in the region of £20,000. This case and the very recent decision in *Pringle* were unfortunate reminders of why satellite litigation about costs in child welfare cases was to be discouraged by maintaining the general principle that there should be no order for costs unless there had been reprehensible or unreasonable conduct in relation to the proceedings.

Pringle v Nervo [2026] EWCA Civ 266
Court of Appeal, 13 March 2026, King, Males and Stuart-Smith LJJ
Joy Brereton KC, Amber Sheridan (Pro Bono) & Gervase de Wilde, instructed by AFP Bloom) for the father; Craig Vickers and Louise Verroken-Jones (Pro Bono), instructed by Nelsons Law, for the mother

The parents, both wealthy, were in a relationship from late 2016 to early 2019 and planned to have a child together. The relationship came to an end when, whilst 6 months pregnant with their child, the mother discovered that the father was also in a long-term relationship with another woman in his home country of New Zealand, a woman with whom he had one daughter and who was expecting a second child.

The mother, who had a significant public profile, revealed to her fans on social media what had happened, which significantly upset the father and his New Zealand family. This conflict interfered with the parents' apparent agreement that the father should have a relationship with the child and that he should facilitate a relationship with the father's New Zealand family.

For about 3 years, there was correspondence between lawyers, as attempts were made to reach agreement on financial issues and as to how best the father could be introduced to the child. In March 2021, it was agreed that the parents should work with a therapist, to assist them to develop their relationship as co-parents, but in July the sessions were paused, because, in the therapist's view, the mother was using the sessions as an opportunity to raise financial issue, which undermined the purpose of the therapy. The mother's solicitors suggested that the therapy restart once the financial issues had been resolved.

The father proposed that he purchase a property to the value of £3 million and establish a £200 million trust fund for the child's benefit. On 22 September 2022, the father applied for a child arrangements order and a parental responsibility order.

On 17 October 2022 the mother filed a C1A form: Allegations of Harm and Domestic Violence, describing the father's deception of the mother in relation to his family in New Zealand and what she perceived to be his desire to keep the child from the child's half-sisters and wider paternal family.

On 18 January 2023 the First Hearing Dispute Resolution Appointment was vacated by agreement on the basis that an independent social worker, chosen by the mother, would be appointed for the purposes of advising the parties about how best to introduce the child to the father and thereafter to assist with the introduction and progression of the contact between the father and the child and, if agreed by them, her wider paternal family.

On 17 April 2023, in his formal response to the mother's C1A allegations of harm, the father again accepted that he had not been honest with the mother as to his relationship with his

long-term partner and expressed his remorse. He again expressed his desire to have a full and meaningful relationship with the child and for her to be a part of his family.

On 18 April 2023 a Dispute Resolution Appointment took place; the parents agreed about the way forward and within days, in accordance with the agreed plan and facilitated by the independent social worker, the child met the father for the first time.

However, in September 2023, the mother changed her legal team, and with it her whole approach to the litigation. She filed a position statement requiring admissions from the father or a fact-finding hearing to prove her allegations of reproductive coercion and controlling behaviour, including "*reproductive coercion, pathological lying, gas-lighting, manipulative deception and rape*". The mother expressed the view that the father had entrapped and raped her, because she "*did not knowingly give consent to the intercourse on a trueful foundation*". She nonetheless also wanted the father to be required to introduce the child to the child's half-siblings and her paternal grandmother, with an in-person family group conference in New Zealand. The judge gave case management directions in November for consideration of whether there should be a fact-finding hearing and also provided for further contact between the child and the father.

On 31 January 2024, the father apologised in his witness statement for his deception of the mother. He did not seek to excuse or justify this deception but expressed a desire to focus on the child's future.

In February 2024, the mother's application for a fact-finding hearing was refused. The judge noted that the child was enjoying contact and that it was agreed that the father should be part of the child's life. In the judge's view, the mother's new legal team had wholly ignored the limits as to witness and position statements. The judge noted that the father's behaviour towards the mother had undoubtedly been abusive and that he had made admissions. However, the judge did not consider that the father needed to concede terms like "'*reproductive coercion, pathological lying, gas-lighting, manipulative deception and rape*". The judge's view was that such claims could be considered at the welfare stage, if they were important, also noting that it was difficult to see what risks the mother claimed the father posed to the child. In the judge's view, the sort of fact finding hearing the mother had in mind would be "*devastating to both parties to go through and to any future cooperation which I note was happening well until November.*"

The father filed a schedule of admissions, accepting that he had led the mother to believe they were in a committed, monogamous relationship, that the child's pregnancy had been planned and that the mother had discovered the truth when she had travelled to New Zealand on an unannounced trip. The father also stated that he suffered from depression and had sought professional assistance for this. The admissions concluded that "*the father accepts the mother will have been deeply impacted by his above behaviour and that this has caused her emotional harm*".

The judge ordered an extension of contact and set the matter down for a welfare hearing, noting in recitals to the order that the father had accepted that his behaviour amounted to domestic abuse of an emotional nature.

However, the father did not in fact take up the contact on offer and on 14 August 2024, he wrote to the mother's solicitors stating that he was withdrawing his applications. In

preparation for a shortened welfare hearing listed for September, the mother filed a witness statement in which she asked the court to refuse the father's application to withdraw his application for a child arrangements order, and to require him to have contact once a month. However, she also opposed granting him parental responsibility on the basis that: "*I wouldn't put it past Matthew to orchestrate a fatal accident to eliminate her from the world he knows this would deeply hurt me and allow him to evade any genuine commitment to her*". The father, in his own witness statement in response, stated that he did not know how to respond to this, but said that it confirmed his own view that the proceedings were no longer in the child's best interests. He also stated that because of his own ongoing depression and anxiety, he was no longer able to cope or engage in the proceedings in any meaningful way. He proposed that no order be made but offered to travel to Europe for face-to-face contact four times a year and have additional video contact in between.

Following the final hearing in September 2024, which the father did not attend, relying on a medical note stating that his mental health meant that he was unable to join the hearing, even remotely, a number of things were decided on. The father eventually, at a further hearing in February 2025, agreed to the making of a declaration of parentage and agreed to pay the costs in respect of the preparation of that application. The judge made a Transparency Order to continue to the child's 18th birthday, as the father had requested (the mother had opposed this). The father ultimately agreed to the making of an order under s 91(14), restricting his ability to make further applications for the next 4 years. The father's application for parental responsibility was withdrawn by consent. The judge permitted the father to withdraw his application for a child arrangements order, refusing to order a fact-finding hearing as requested by the mother, stating that there was "*no solid advantage but only potential solid disadvantage to C when the issue of contact was not a live issue between the parties*".

In relation to costs, the parents submitted and the judge worked from an agreed document headed "*Legal Framework Regarding Costs*", which set out the basic principles, including the principle that it was unusual for an order for costs to be made in proceedings relating to children. The judge nonetheless went on to make a costs order requiring the father to pay £385,587, being 75% of the costs of over £500,000 incurred by the mother. The judge identified four reasons for this decision: i) that the father's motivation in issuing proceedings had not primarily been concerned with the child's welfare, but to protect his own privacy; ii) that the father had chosen to withdraw his application for parental responsibility and a child arrangements order at a late stage; iii) that the father had failed to attend some of the hearings, despite having been given permission to attend remotely; and iv) that the father's had made a late concession concerning the making of a s 91(14) order and a late application to file a witness statement. Although the judge accepted that he could not go behind the medical letters put before the court, he also accepted the mother's submission that a diagnosis of anxiety was always based on a material degree of self-reporting. In the judge's view there had not been a sufficient deterioration in the father's condition to justify his non-attendance, rather than attendance remotely, if appropriate with the camera turned off or with other special measures in place.

The father appealed, arguing that the judge had been wrong to make an order for costs, given the high bar that required a party's behaviour in respect of proceedings involving a child to have been "reprehensible or unreasonable" before an order for costs was made, relying on *Re T (Children) (Care Proceedings: Costs)* [2012] UKSC 36 and *Re S (A Child) (Father's Costs of Appeal)* [2015] UKSC 10.

The Court of Appeal allowed the father's appeal.

The correct approach to the making of costs in child arrangements proceedings was that identified in *Re T (Children) (Care Proceedings: Costs)* [2012] UKSC 36 at para [44] and adopted in *Re S (A Child) (Father's Costs of Appeal)* [2015] UKSC 10 at para [26], namely that the general principle was that there should be no order for costs in children cases absent reprehensible behaviour or an unreasonable stance being taken by a party in relation to the proceedings. That was the approach adopted in *Re E (Children: Costs)* [2025] EWCA Civ 183, an approach which, quoting *Re E,* provided a test which was "*simple, flexible and well-established, and there is no reason to depart from it"*. The distinction identified by the mother between the *Re S* characterisation of the making of an order for costs being "*unusual*" with that in *Re E* of such an order being "*exceptional*" did not represent a lower threshold for the making of a costs order, but was rather a semantic distinction of no relevance either to the issue before this court or to the court of first instance.

Even if the judge had been right in concluding that "*furthering F's privacy was a motivator behind his conduct*" this court could not see how, given the overall circumstances and background to the case, and following 3 years of pre-action correspondence, a finding of such a partial motivation could even amount to a make-weight to any application for costs.

An application to withdraw made just over a fortnight before the hearing was undoubtedly late. All too often in private law family cases, parties made decisions or reached agreement very late in the day. Inevitably the lateness of these decisions might mean that costs had by then been incurred. If, however, each time that this happened an order for costs was made, other than on the basis of the stringent test set out in *Re T*, one would see orders for costs being made more or less routinely in Children Act proceedings, which would undermine the principle that, for the reasons given in *Re S*, it was inappropriate as a general rule to make costs orders in children's cases. Following the notification that the father intended to withdraw his application for parental responsibility and a child arrangements order, the time estimate for a full welfare hearing had been reduced from 4 days to 1 day. Almost always such an application would have resulted in a consent order being put before the judge for approval, but instead the mother had "*strongly opposed*" the withdrawal and sought a full finding of fact hearing of the type already refused. Similarly the mother had "*strongly resisted*" the continuation of the Transparency Order and had maintained her desire to "*tell her story*" in the knowledge that it would inevitably lead to a blaze of publicity which could only have had an impact on the child, who had by then been attending school. It followed that considerable costs had been incurred by both sides as a result of the mother's approach after the father had given notice that he wished to withdraw from the proceedings.

It could not be said that the father's failure to attend two hearings either together or with the other matters considered by the judge, would begin to approach the sort of unreasonable conduct which the Supreme Court had had in mind in *Re T* and *Re S*. The father had been given permission by the court to attend remotely and had been represented by leading and junior counsel who had been given instructions in advance of the hearing, (although there might have been difficulties in getting further instructions during the hearing). Counsel had been well able to present all the arguments before the court. No court time so far as this court was aware, had been lost and each of the hearings had been by way of submissions only, so the father would not have been required to given oral evidence.

The judge's approach towards costs had given too broad an interpretation of what amounted to unreasonable behaviour sufficient to justify the making of an order and had relied heavily on low level procedural conduct in the form of late decision making and late notice, which, whilst to be deprecated, was in reality all too often part and parcel of such emotive proceedings. Had the judge focused on the approach summarised in *Re E*, he would have concluded that the father's conduct, before and during the proceedings, could not on any basis be regarded as reprehensible or unreasonable and, that once the mother's own conduct was added to the equation, there should be no derogation from the general rule that there should be no order for costs in children cases.

The court was conscious and appreciated that the judge had been faced with numerous applications spread over a substantial period of time, against the backdrop of the father's deceitful behaviour towards the mother in the period of time leading up to the child's birth. It was clear that the judge had been frustrated by the father's failure to attend remotely at the hearings in September 2024 and February 2025 and had been dealing with costs as the last of four judgments. The judge had clearly been conscious that those costs, if paid by the father, who could well afford it, could be utilised for the child's benefit. However, the point of principle applied regardless of means and had the judge worked his way through Civil Procedure Rules, r 44.2(4) in respect of each of the parties' conduct, and in particular factored in the mother's late application for a finding of fact hearing, which had derailed the consensual progress of the case, he would have appreciated that this was not one of those rare cases where the making of an order for costs was appropriate.

The court was not in any way underplaying the father's shameful and deceitful behaviour towards the mother or ignoring his admission that that behaviour amounted to emotional abuse of the mother. It was clear that the father's behaviour, quite understandably, remained a source of considerable bitterness and continuing distress to the mother. An order for costs however related only to the conduct of the parties in relation to the pre-proceedings and proceedings and not to the events, abusive or otherwise, which had led to the child's conception. Such matters might well go to the welfare analysis in cases where, unlike here, there was an issue as to whether contact should take place at all, but did not go to costs.

It followed that the appeal must be allowed, the judge having fallen into error in that he had:
i) Failed to take into account the conduct of both parties.
ii) Wrongly concluded that the four features relied upon by him were capable of justifying a finding of unreasonable conduct on the part of the father such as to lead to the making of an order for costs, contrary to the general principle that there should be no order for costs in children cases.
iii) Failed properly to apply CPR r 44.4(3), in that he had regarded matters which should properly have been taken into account in deciding whether an order should be made at all, as features going only to mitigation under CPR r 44.2(4) and (5).
An order that there be no order for costs was to be substituted for the judge's order save, as conceded by the father, for an order for costs in respect of the mother's preparation of the declaration of parentage application on a standard basis to be assessed if not agreed.

Males and Trowell: it was a great pity that, when instructing a new legal team in September 2023, the mother had chosen to introduce into the proceedings allegations of "*reproductive coercion and controlling behaviour including gas-lighting, love bombing, blame shifting, future faking and financial abuse through excessive litigation*" and specifically of entrapment and rape, and to persist thereafter in seeking a fact finding hearing (or its equivalent after the

application for such a hearing had been refused) for these allegations to be ventilated in court. Deplorable as the father's conduct had been, and however understandable the mother's bitterness about it, this change of approach had been guaranteed to send the temperature of the litigation soaring and to increase the costs substantially. Even more importantly, it had been bound to undo much of the progress which had been made up to that time in working out a way in which the child might have a relationship with both of her parents and, as the judges in the court below had rightly held, had been quite unnecessary in view of the father's admissions. The fact that the mother had chosen to conduct the proceedings in this way had been highly relevant to the question whether a costs order should be made against the father, but the judge had not taken it into account as a factor. As non-specialists in family law, the concept of a Transparency Order whose sole purpose was to ensure privacy was somewhat bemusing. Such orders would be appropriately made in many cases, and there was no issue as to the order made in this case, but it seemed rather odd that such orders did precisely the opposite of what it said on the tin.

Financial Remedies

De La Sala and Copinger-Symes v De La Sala and Dexfield [2026] EWCA Civ 282
Court of Appeal, 17 March 2026, Moylan, Andrews and Nugee LJJ
Dakis Hagen KC and Andrew Gurr (instructed by Keystone Law Ltd) for the wife's mother as intervenor; Richard Todd KC and Ben Boucher-Giles (instructed by Keystone Law Ltd) for the husband; Justin Warshaw KC, Edward Cumming KC and Joshua Viney (instructed by Clarence Family Law) for the wife

The British husband and the Australian wife married in 1998; they had four children together. During the marriage they lived in England, Australia and Singapore, separating in 2017. The wife's family had founded a very successful shipping business in Hong Kong and Singapore and the couple were very involved in the wife's family business in Singapore, holding important directorships. However, following extensive litigation between family members, by 2017, the wife had become seriously estranged from her parents and her siblings and her parents had withdrawn their financial and emotional support from her. By contrast, the relationship between the husband and the wife's family remained very positive. The wife's estrangement from her family only worsened over the years following the separation, with the wife's family taking the husband's side against the wife on the divorce issues.

The husband and wife's financial remedies proceedings started in September 2017. In 2020, the wife's counsel asserted in a position statement for a case management hearing that the husband would continue to benefit from her family's largesse and wealth once the proceedings were over, whereas she would not; her statement claimed that once the proceedings were over, he would be handsomely repaid for his loyalty to her family. She had more money than the husband and her position was this was a needs claim by the husband, but not a sharing claim.

Following negotiations, the husband and wife reached agreement on the terms of a proposed consent order. The terms of the agreement were, broadly, that the wife would pay the husband a lump sum of £850,000 and would pay the children's school fees; otherwise, there was to be a clean break. A draft consent order was prepared. This included a recital which recorded that "*it is an underlying assumption of this agreement that the Wife will continue to work as a consultant with*" her family's company with the same income, "*although the Wife accepts that this is a matter over which the Husband has influence but is not within his ultimate control*" and that the wife's "*expectation*" was that her salary would be inflation-linked "*to ensure that she continues to receive an adequate level of income to meet her needs*". The draft consent order was approved at a hearing on 4 March 2022, but only after the deputy judge raised concerns about the wording of some of the undertakings and other clauses and also the apparent departure from equality in the wife's favour after a long marriage. Financial schedules provided at the March hearing set out assets of between £3.6 million and £6.2 million (depending on whether the wife had to repay money to her parents and on whether she would have to pay £1 million in tax). In addition, both the husband and the wife received US$500,000 from the wife's parents, separate to the sums in the schedules. Both the husband and the wife were earning £6,000 pm gross, as employees of one of the wife's family companies. The husband was said to have a "*real and permanent job*", while the wife was said to have a "'*temporary consultancy agreement*' *for which work was not actually required*". The net effect of the terms agreed was that on a worst-case scenario namely the wife having to pay £1.5 million and £1 million, the wife would have capital resources totalling £2.4 million and the husband £1.2 million; on a best-case scenario, the wife would have £4.99 million and the husband £1.2 million.

However, the wife did not pay the husband the lump sum of £850,000, or pay the school fees, under the order, leading to him making an application for enforcement. The wife cross-applied for enforcement in relation to money held in an account, slightly less than the amount set out in the schedules. In July 2022, shortly after he was diagnosed with cancer, the husband was given US$14.77 million by the wife's mother (matching amounts given to the wife's siblings in July 2021), and he received a further gift from her of US$20 million on 12 August 2022.

After financial disclosure in the enforcement proceedings led to the wife discovering the extent of the husband's new wealth, she applied, in May 2023, to set aside the consent order, on the basis of deliberate material non-disclosure by the husband. The wife argued that the husband had known by late 2020 or early 2021 that he was likely to receive a substantial gift of money from her family and the likely size of that sum. The wife's mother then sought to intervene in the proceedings, seeking to have the amounts she had given the husband repaid to her, on the basis that she would never have given the husband this money if she had thought there was any possibility that the wife, her daughter, could benefit from it. The wife's mother was joined in the proceedings as an intervenor, but the judge rejected her claim, finding that the gifts had not been subject to any condition, and had clearly been intended to

be outright gifts. In the judge's view, the husband had known about the gift to be made to him by late 2020 or 2021. In his view the family witnesses called by the wife's mother and the husband had coordinated their stories and were not trying to give an honest, full and independent account. The judge set aside the consent order on the ground of material non-disclosure.

The husband and the wife's mother both appealed.

The Court of Appeal dismissed both appeals.

The issue raised by this appeal was whether the judge's determination, that the husband had not satisfied him that disclosure "*that the wife's parents/mother were planning to gift a substantial amount of money to [him] would have made no [substantial] difference to the negotiations or the outcome in this case*", was flawed or wrong. The court had added the word "*substantial*" because it was clear that this was the approach the judge had been applying as he went on to set out his conclusion that the disclosure would have "*made a significant difference*".

The court did not accept that the set aside jurisdiction depended on whether the "*non-disclosure ... undermined the whole basis of the order*". This was contradicted by both *Jenkins v Livesey* [1985] AC 424 and *Sharland v Sharland* [2015] UKSC 50, which referred to "*substantially different*" and "*significantly different*". The phraseology relied on by the husband reflected the approach under *Barder v Caluori* [1998] AC 20. Further, the issue was not relevance, but materiality and it was not helpful to seek to introduce a further element or to describe it in this way. As had rightly been accepted by the husband's team, "*the burden of proving lack of materiality is on the Husband*" because, quoting *Sharland*, "*a party who has practised deception with a view to a particular end, which has been attained by it, cannot be allowed to deny its materiality*". Material in this context meant disclosure which was not "*relatively minor*" but such as would have led to a substantially different order being made. Accordingly because, in cases of deliberate non-disclosure, the non-disclosure was deemed to be material, the judge had been right to say that "*it prima facie follows that I should set aside the March 2022 consent order*" subject to the husband establishing the *Sharland* exception.

The judge had been right to decide, not only that the husband had failed to establish the *Sharland* exception (because he had not discharged the burden of proving lack of materiality) but also that the disclosure would have "*made a significant difference*". First, as demonstrated by *Gohil v Gohil (No 2)* [2015] UKSC 61, one party's suspicions or belief that the other party had or would have financial resources which they had not disclosed, did not "*exonerate the other from complying with his or her duty*" *to give full and frank disclosure*". The order was still potentially "*flawed*". Further, there was a substantive difference between, even, a confident belief or assertion and an established fact. An asserted but challenged or not accepted fact (such as "*the husband will be handsomely repaid*") was very different from an admitted fact that the wife's parents intended to give the husband, at least, US$14.77 million. The assertion that, if the husband had been honest, it would have made no difference because, if disclosed, the potential gift would not have happened did not relate to any finding made by the judge and was flawed in any event. What the husband had needed to disclose was that he knew that the wife's parents were likely to give him a "*substantial gift*" of at least US$14.77 million. The possibility that there might have been other arguments as to the precise timing of this and/or that the court might have been required to determine if and when this would occur, did not assist the husband in establishing that the disclosure would have made no

difference. They were hypotheticals which would require evidence and findings and, at most, addressed 'might' and not 'would'. In any event, the prospect of the husband receiving at least US$14.77 million completely changed the landscape and nature of the case as presented in 2022 and was very far away from a "*relatively minor matter*". The submission that this amount was not material because this was a needs case and the wife's needs had been "*met*" was wholly unpersuasive. Needs were not assessed in a vacuum but were always assessed in the context of the available resources. That those resources were of a different order to that which had been disclosed would transform the nature of the needs assessment not only in respect of the wife's needs but also in respect of the husband's needs. It was obvious that the husband's needs were of critical relevance and the assessment of his needs alone would have been transformed if he had made proper disclosure of the expected receipt of US$14.77 million.

This case graphically illustrated the importance of observations in *Sharland*, particularly at para [32]. The maxim that "*fraud unravels all*" was as apt to cover bargains made in the context of family proceedings as it was to cover any other type of contract induced by the deliberate withholding of material facts. The suppression of the information about the largesse that the husband had known the wife's parents intended to bestow upon him meant that not only the wife and her representatives, but the court, had been presented with a seriously distorted picture of the parties' respective financial circumstances and needs. The draft consent order, and the court's approval of it, had been premised on that distorted picture. The information was plainly material.

As to the intervenor's claim that the gifts had been conditional on the wife receiving no benefit from them, there was more than enough evidence to support the judge's finding that the gifts to the husband had been outright gifts. Passages in the evidence of the wife's mother made it clear that, as far as she concerned, once the money had been transferred to the husband it was his money, to deal with howsoever he wished, even if he used some of it to confer a benefit on his former wife. Whilst it might be, as the wife's mother had put it, "*unfortunate*" if he were later compelled by a court to pay some of that money to the wife, the fact that he would be acting under compulsion rather than voluntarily would be immaterial to his right to treat that money as his own. The interesting, and quite difficult, questions raised by the intervenor's counsel as to whether, and, if so, in what circumstances, gifts could be recovered by the donor for failure of basis more generally did not arise. The intervenor's case had been that the gifts were subject to an implied condition; the judge had found that they were not and that finding had been open to him.

So far as the claim in mistake was concerned, the intervenor had needed to establish four things, namely (1) that she had a particular belief; (2) that that belief was causative of the gifts; (3) that it was mistaken; and (4) that the mistake had been sufficiently grave to make it unconscionable for the husband to retain the gifts. The judge had rejected the claim because he found that (4) was not established, but it was not clear that he had accepted that (1) to (3) had been established. Bearing in mind that the judge had not considered the wife's mother to be a witness of truth, the judge's actual findings suggested that the wife's mother had believed that after the making of the consent order the wife would have no further claim against the husband, but any mistaken belief on the part of the wife's mother that the wife could not benefit from the gifts had not been causative of the gifts. She had clearly wanted the husband to have the gifts and to keep them for himself. Whilst she had wanted to make the gifts in a way that prevented the wife from staking a claim to a share in them, it did not follow that she would not have wanted him to have the gifts at all if that desired outcome

could not be achieved. Therefore the judge had been fully justified in concluding that it was not inequitable for the husband to retain the gifts, and the test in *Pitt v Holt* [2013] UKSC 26, was not satisfied.

Negligence

Kay v Martineau Johnson (A Firm) [2026] EWCA Civ 224
Court of Appeal, 5 March 2026, Newey, Males and Lewis LJJ
James Hall, instructed by Sehdeva Law, for the woman; Simon Wilton KC, instructed by Travelers Legal, for the firm.

The woman and her husband each petitioned for divorce and in December 2007, the woman instructed the firm of solicitors to act for her in her claim for financial remedies. The practice of the relevant partner focused on private family law related matters.

On 25 April 2008, a settlement was reached at a financial dispute resolution hearing and this was turned into a consent order on 29 September 2008. The settlement provided for the woman to receive the net proceeds of sale of a property, a £4,000 lump sum in respect of spousal maintenance, and 80% of any money recovered from a claim against a builder who had done work on the property. The order provided for a clean break.

The woman had throughout had concerns about whether the husband had revealed the full extent of his financial resources. Soon after the settlement was concluded these concerns resurfaced and the woman approached the firm to see whether the settlement could be reopened. In November 2008, the firm advised that there was no basis for setting aside the settlement, repeating that advice in May 2009. The firm ceased to act for the woman in June 2009.

Also in 2009, proceedings were issued against the builder. Although the claim was ultimately successful, nothing was recovered, because the builder declared himself bankrupt. As a result of the global financial crisis, the value of the property was less than expected; when it was sold in 2011, the woman apparently received £100,000.

The wife believed that the husband was now living in affluent circumstances, while she was struggling to raise two children with no regular income. She then began a relationship with a litigation solicitor (not a family law practitioner) and he began to assist her on an informal basis to investigate her suspicions.

On 23 April 2018, the woman asked the firm for their file; they provided it in May. The file did not include the husband's Form E and accompanying documentation but on request the

firm provided these in January 2019. The wife also asked for the "*Hildebrand*" bundle, relating to the husband's finances, but it emerged that this had been surrendered in 2008 to solicitors working for the husband's brother.

On 27 March 2020, after the woman and the litigation solicitor had briefly separated, then reconciled, the litigation solicitor instructed a barrister specialising in family law, at his own expense, to advise on whether the settlement could be reopened. The barrister advised in writing that such an application would not succeed, as there was no clear evidence that the husband had failed to disclose assets held at the date of the settlement, such that it would have led to a different outcome. In a conversation, the barrister said she thought there might be a claim against the firm.

On 6 March 2023, the woman issued proceedings against the firm, claiming damages for loss allegedly suffered as a result of negligent advice. In broad terms, she claimed that the firm had failed to give her adequate advice as to the options for and merits of further investigating the husband's means (including by means of forensic accountancy advice and a pension sharing report), had failed to give her adequate advice in relation to the possibility of seeking an order under s 37 of the Matrimonial Causes Act 1973 and had recommended that she enter into the settlement when that had not been advisable. A specific complaint made was that the firm had "*[f]ailed adequately or at all, to advise [the woman] of the availability and/or merits of pursuing a nominal spousal maintenance order in circumstances where it was obvious or ought to have been obvious to [the firm] that [the husband] had likely failed to disclose assets and means and/or was likely to be capable of acquiring substantial earnings and wealth in the future*". The firm denied that they had been negligent and in any event contended that the claim was statute-barred.

Following a trial of a preliminary issue as to whether the claim was barred by the Limitation Act1980, the judge determined the issue in favour of the firm, finding that the woman had known the relevant facts by June 2009, and dismissed the claim. In the judge's view, it must have been "*obvious to [the woman] that, on her case in these proceedings, something must have gone wrong in the advancement of her ancillary relief claim*"..

The woman appealed against that decision.

The Court of Appeal allowed the woman's appeal but went on to dismiss her claim.

The judge had said that by June 2009 it must have been "*obvious to [the woman] that, on her case in these proceedings, something must have gone wrong in the advancement of her ancillary relief claim*". However, not only did the correspondence from the period indicate that the woman had not in fact drawn the suggested inference, but also this court did not consider that the implication was a necessary one. It had been entirely possible for the firm to have given non-negligent advice and yet for the wife's settlement with the husband to have proved not to have given her a "*fair deal*".

In the circumstances, this court needed to consider afresh whether the woman had possessed actual knowledge by the end of 2009. It took the view that the woman had not had the requisite knowledge (sometimes referred to as actual knowledge) within the meaning of s 14(A(6)-(8)) of the Limitation Act 1980 in 2008 or 2009. The woman had believed that her settlement with the husband had turned out badly for her, and that there was reason for her to

take expert advice in relation to it, but it had remained the case that the advice the firm had given her was "*apparently sound and reliable*".

Section 14A(10) LA 1980, however, provided that a claimant was also to be treated as having knowledge of facts that he could reasonably have been expected to acquire with the help of expert advice which it was reasonable to obtain, subject to the proviso that a person was not to be taken to have knowledge of a fact ascertainable with expert advice "*so long as he has taken all reasonable steps to obtain*" that advice. The real issue in relation to the 2009 period concerned the operation of that proviso.

(Males and Lewis LJJ, Newey dissenting): it had been reasonable, in the first instance, for the woman to seek advice from the solicitors who had acted for her during the divorce proceedings, concerning whether a claim could be made against her former husband. She had been advised, correctly, that the settlement was final and that a claim could not be brought. It had been open to the judge below to find that, from about June 2009, the woman had known enough to cause her to investigate whether her inability to take further proceedings against her husband was in fact attributable to the advice given to her by her former solicitors. It had also been open to the judge to find that she had not taken all reasonable steps to obtain such advice. She was, therefore, to be treated as having knowledge of facts that she would have ascertained if she had obtained such advice, i.e. that the damage that she had suffered might be attributable to the advice given by her former solicitors. Therefore the claim had been time-barred from June 2009 onwards.

In any event, the woman was to be treated as having knowledge of the facts that she would have ascertained if she had taken expert legal advice in 2018 or 2019. The ground of challenge here was that the woman could not have afforded to take legal advice and, therefore, she had taken all reasonable steps she could, given her limited resources. It was questionable whether a claimant's lack of resources could be relevant for the purposes of s 14A(10). Even, however, if there could be circumstances in which impecuniosity was relevant, they would be rare, and it must be incumbent on a claimant who wished to rely on impecuniosity to provide detailed evidence as to their financial circumstances and how these prevented them from obtaining appropriate advice. The evidence in this case did not establish that any alleged impecuniosity or lack of resources on the woman's part was the cause of the failure to obtain legal advice earlier. The woman had not, therefore, taken all reasonable steps and she was to be taken as having knowledge of the facts that such legal advice would have enabled her to ascertain. She therefore had the requisite knowledge in 2018 or 2019, i.e. more than 3 years before the claim was issued and the claim was, therefore, time- barred.

The evidence did not come close to establishing that this was one of those rare cases in which impecuniosity might possibly justify a claimant's failure to obtain advice earlier for the purposes of s 14A(10) of the 1980 Act. There was no reason to doubt that the woman had been short of money in 2018-2020. While, however, there was no evidence as to how much the barrister had charged for her advice, the cost was unlikely to have been all that great (perhaps a few thousand pounds) and the woman had not gone into her financial position in any detail at all. Neither had she explained quite what money she had, what her financial commitments had been or what earning capacity she had had. She had referred in the earlier of her witness statements to having pursued a claim against "*a former acquaintance who proved to be a fraudster*" through to a week-long trial and an application for permission to appeal and subsequent Lands Tribunal proceedings. She had not expanded on how she had been in a position to prosecute this litigation but yet not to obtain advice on her settlement

with her husband. Overall, the court agreed that the evidence suggested that the delay in obtaining the barrister's advice had been caused by a lack of prioritisation rather than shortage of money. In all the circumstances, this court agreed with the judge that the woman had had constructive knowledge more than 3 years before the present claim was issued in March 2023 and, hence, that it was statute-barred.

Newey (dissenting): while the judge had said that, had he not found the woman to have had actual knowledge, he would have made a finding of "*constructive trigger knowledge*", he had not commented on whether the woman could rely on the proviso to s 14A(10) LA 1980. This court must therefore consider the question for itself. This court's conclusion was that it had not been incumbent on the woman to seek further legal advice and that she could therefore rely on the proviso to s 14A(10) LA 1980. The firm could been expected to advise the woman to obtain independent advice had they considered that they might have been negligent. They had not done so, doubtless because they did not think that they had been negligent. Instead, they had advised the woman in unqualified terms that the settlement could not be reopened. It had been reasonable for the woman to understand from what she had been told that there was nothing she could do and so to leave matters there. Even without a "*something more*" giving rise to actual knowledge, it had been reasonable for the woman to seek expert advice, but she had done so. It was true that the advice she had asked concerned the question of whether the settlement could be challenged, rather than the question of whether the firm had been negligent, but it had been reasonable to assume that the firm would have alerted her to the possibility of negligence had there been one. In the circumstances, the woman did not reasonably have to go elsewhere for further advice. It followed that the woman had not had constructive knowledge in 2008- 2009.